IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6261 OF 2006

Hiralal Govind Patel & ors ..Petitioners
V/s.
The State of Maharashtra & ors ..Respondents

WITH

WRIT PETITION NO.6430 OF 2006

M/s.Jagtap saw mills ..Petitioner
V/s.
State of Maharashtra and ors ..Respondents

WITH

WRIT PETITION NO.6844 OF 2006

Jagannath Tukaram Deshmukh ..Petitioner
V/s.
Deputy Superintendent (Forest), Solapur Forest Department, Solapur and anr. ..Respondents

Mr.A.V.Anturkar i/b.Mr.S.B.Deshmukh for the petitioner in W.P.Nos.6261/2006 with 6430/2006 with 6844/2006
Mr.Umesh Mankapure for the petitioner in W.P.No.6844/2006
Mr.C.R.Sonvane, AGP for the respondent Nos.1 to 4 in W.P.No.6261/2006 and for the respondent Nos.1 & 2 in W.P.No.6430/2006 & W.P.No.6844/2006
Mr.G.Hariharan with Mr.Kiran J. Kandpile for the respondent No.5 in W.P.No.6261/2006
Mr.G.Hariharan with Mr.N.R.Prajapati for the respondent No.3 in W.P.No.6430/2006

CORAM : S.B.MHASE &
R.S.MOHITE, JJ.

DATE : 24TH APRIL, 2007

P.C.

1. Heard both the sides. The petitioners before this Court in these petition are persons who had established unauthorized saw mills prior to 1981. These saw mills were established within a distance of ten Kilometers from a reserved/protected forest. Subsequently, after the year 1981 they were granted licences by the Government for running their unauthorized saw mills. According to the advocate for the petitioners, these licences have been granted by the Government to the petitioners by virtue of Clause-4 of the Government Notification dated 19th August, 1981, published in the Gazette & issued by the Government in exercise of power conferred by Sub-Rule (11), Rule 88 of the Bombay Forest Rules, 1982. It is not disputed before us that these

licences granted to the saw mills run by the petitioners were re-newed from year to year and from time to time. The last such re-newal of these licences was on different dates and, in any case, before 11th January 2005 which is the date on which a letter was sent by the Joint Secretary, Revenue & Forest Department to the Chief Conservator of Forest, State of Maharashtra. This letter dated 11/01/2005 stated that the licences of saw mills which are situated within a distance of ten Kilometers should not be renewed. Further, it appears that after the issuing of the letter dated 11th January, 2005, the licences of such saw mills, including saw mills of the petitioners, situated within a distance of ten Kilometers have not been renewed.

2. The present petitioner however, challenges the consequent seizure of the property of the saw mills by the Forest officials. Such seizure has been effected from time to time on different dates.

3. It is the contention of the advocate for the petitioners that all of them had applied for renewal before expiry of their existing licences. Mr.C.R.Sonwane, the learned AGP, after taking instructions from the officers of the Forest department i.e.A.N.Khadse, who is the Deputy Conservator of Forest and Mr.B.G.Gargote, Assistant Conservator of Forest confirms the fact that the petitioners' applications for renewal of the licences of the saw mills were received prior to the expiry of their last licences. In this background we have considered the right of the Forest officials to seize the property of the petitioners. The only power that has been pointed out to us, enabling the Government to seize the property of the saw mills is Section 52 of the Indian Forest Act, 1927, which can be exercised on the commission of a forest offence. We therefore, called upon the AGP to point out to us as to what can be the forest offence said to have been

committed by the saw mills which were earlier holding licences. The answer was that the continuance of the business of the saw mills without licence within a distance of ten Kilometers from protected/reserved forest. In this context we find that Rule 88(6) of the Bombay Forest Rules, 1942 would have a bearing. This rule reads as under :-

> 88(6) An application for renewal of a licence shall be made before the expiry of the period of the licence; and failure to renew will render the licensee liable to punishment for operating the saw mill without a licence

3. On a reading of the rule, it appears that a duty has been cast upon the licence holder to apply for renewal of the licence before expiry of the period of licence. Thereafter, failure to renew the licence renders him liable to punishment for operating the saw mill without a licence. It is

not disputed before us that applications for renewal of licence were made by saw mills run by all the petitioners before the expiry of their respective licences. The same have not been decided till today. In the absence of refusal/or failure to renew the licence, it appears that the licencee is not liable to punishment. No other circumstance has been shown to us as to how their saw mills can be said to have committed a forest offence. It is contended by the advocate for the petitioners that licences were granted to them under a statutory rule having statutory force. The letter issued by the Joint Secretary, Revenue & Forest Department cannot be said to be an executive instruction within the meaning of Article 166 of the Constitution of India since the same has not been issued in the name of the Governor. This question does not presently arise in this petition because there is no challenge to the said letter. Admittedly the renewal applications are still pending and have not been decided.

4. In this background we feel that the petitions may be disposed off by passing the following order.

O R D E R

A. The concerned officer of the State of Maharashtra will decide the applications of the saw mills run by the various petitioners to this petition within a period of six weeks from today. The decision on the renewal application will be communicated to the respective saw mill immediately after it is taken.

B. The seals on the saw mills are directed to be removed pending the decision on their renewal applications. It is however, made clear that if there is failure to renew licences of the saw mills run by the petitioners then it will be open for the State to seal the premises if their business is

wrongly continued. It is made clear that merely because sealing has been lifted this will not amount to grant of permission or a licence to any of the saw mills to recommence & run their business unless renewal is granted and conditions, if any, of the renewal are complied with. All contentions of the parties are left open and the same can be raised at an appropriate stage.

C. With these directions, the petitions are disposed off.

(**R.S.MOHITE, J.**) (**S.B.MHASE, J.**)